

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

---

**EDWARD E. GILLEN CO.,**

Plaintiff,

**-vs-**

**THE INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA,**

Defendant.

---

**Case No. 10-C-564**

**FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND, and BMO HARRIS NATIONAL  
BANK, N.A.,**

Intervening Plaintiffs,

**-vs-**

**THE INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA and EDWARD E. GILLEN  
CO.,**

Defendants.

---

**DECISION AND ORDER**

---

Edward E. Gillen Co. and the Insurance Company of the State of Pennsylvania (“ICSOP”) have reached a settlement in this case which is in the process of being finalized. Fidelity and Deposit Company of Maryland (“F&D”) already intervened, claiming a right to the proceeds of this settlement. BMO Harris National Bank, N.A. (“BMO Harris”) now also moves to intervene. F&D opposes this motion, but in doing so prematurely invites the Court to adjudicate the merits of the parties’ opposing claims to the settlement funds. “An application for intervention cannot be resolved by

reference to the ultimate merits of the claim the intervenor seeks to assert unless the allegations are frivolous on their face.” *Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999). BMO Harris’s motion, just like F&D’s motion, meets the requirements of Federal Rule of Civil Procedure 24(a).

BMO Harris’s motion to intervene [ECF No. 175] is **GRANTED**. BMO Harris should file its complaint within **ten (10)** days of the date of this Order.

Dated at Milwaukee, Wisconsin, this 1st day of August, 2013.

**BY THE COURT:**

  
HON. RUDOLPH T. RANDA  
U.S. District Judge